

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Application of)
CITY OF EL SEGUNDO) File No. 0001818985
To Operate a Public Safety Radio)
Communications System in Frequency Band)
470-512 MHz in El Segundo, California)

ORDER ON RECONSIDERATION

Adopted: November 25, 2005

Released: November 28, 2005

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On July 7, 2005, National Science and Technology Network, Inc. (NSTN) filed an Informal Petition for Reconsideration (Petition) of an Order granting the above-captioned application and waiver request of the City of El Segundo, California ("El Segundo" or "the City"). The Order concurrently denied an Informal Petition to Dismiss or Deny filed by NSTN. In the instant Petition, NSTN seeks reconsideration of the Order on the basis that El Segundo's operations will cause harmful interference to NSTN's Station WPMP967, Los Angeles, California. For the reasons set forth below, we deny NSTN's Petition.

II. BACKGROUND

2. In February 1997, the Commission concluded that all certified frequency advisory committees (coordinators) should adhere to a minimum set of technical procedures to provide the private land mobile radio (PLMR) community with confidence that all new and existing radio systems would be adequately protected from interference under the rules adopted in the Refarming proceeding. Noting the potential harm that could befall licensees' systems if different coordinators were to use different standards, the Commission directed the coordinators to attempt to reach a consensus on technical

1 Letter from Ted S. Henry, President, National Science and Technology Network, Inc. to Secretary, Federal Communications Commission (dated July 5, 2005) (Petition).

2 City of El Segundo, Order, 20 FCC Rcd 10105 (WTB PSCID 2005) (Order).

3 FCC File No. 0001818985 (filed July 26, 2004, amended Aug. 12, 2005, Oct. 18, 2004, and Oct. 26, 2004).

4 Letter from Ted S. Henry, President, National Science and Technology Network, Inc. to Mr. Tracy Simmons, Federal Communications Commission (dated Oct. 5, 2004) (Informal Petition to Dismiss or Deny).

5 See Petition at 1.

6 See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, PR Docket No. 92-235, Second Report and Order, 12 FCC Rcd 14307, 14330-31 ¶ 43 (1997).

standards for frequency coordination under the Refarming rules.⁷ In September 1997, the Land Mobile Communications Council (LMCC)⁸ notified the Wireless Telecommunications Bureau (Bureau) that the coordinators had reached a consensus (hereafter referred to as “LMCC consensus” or “LMCC procedures”) and provided a summary of the actual frequency selection protocols that would be used at 470-512 MHz.⁹ That consensus is embodied in the LMCC procedures for evaluating adjacent channel interference in the 470-512 MHz band using the TIA/EIA/TSB-88 (TSB-88) propagation model.¹⁰

3. On July 26, 2004, El Segundo filed an application and a waiver request, pursuant to Section 1.925 of the Commission’s Rules,¹¹ for authority to operate a public safety radio system in the Los Angeles metropolitan area on four frequencies designated for industrial/business use. On October 5, 2004, NSTN submitted the Informal Petition to Dismiss or Deny the City’s application, asserting that El Segundo’s proposed operations would cause interference to NSTN’s operations. On June 7, 2005, the Bureau’s Public Safety and Critical Infrastructure Division (Division) denied NSTN’s Informal Petition to Dismiss or Deny and granted the City’s waiver request.¹² The Division concluded that neither the Part 90 rules nor the LMCC procedures require a TSB-88 analysis when the stations at issue have no overlap of authorized bandwidth, as in the present case.¹³ The Division also noted that NSTN had not submitted an engineering analysis to support its allegations of interference.¹⁴

4. On June 8, 2005, the City’s application was granted under Call Sign WQCV954. On July 7, 2005, NSTN filed the instant Petition. On July 20, 2005, El Segundo submitted an opposition to the Petition.¹⁵

III. DISCUSSION

5. NSTN first takes issue with the Division’s conclusion that neither Part 90 nor the LMCC

⁷ See *id.* at 14329 ¶ 41.

⁸ The LMCC is a non-profit association of organizations representing virtually all users of land mobile radio systems, providers of land mobile services and manufacturers of land mobile equipment. LMCC’s membership includes all of the Commission’s certified Part 90 frequency coordinators. See Amendment of Part 90 of the Commission’s Rules and Policies for Application and Licensing of Low Power Operations in the Private Land Mobile Radio 450-470 MHz Band, WT Docket No. 01-146, *Report and Order*, 18 FCC 3948, 3949 n.2 (2003).

⁹ See Frequency Selection Procedures—12.5 kHz Offset Assignments at 470-512 MHz (LMCC consensus), attached to Letter from Larry A. Miller, President, Land Mobile Communications Council, to Daniel B. Phythyon, Chief, WTB (dated Sept. 10, 1997) (LMCC letter).

¹⁰ See Filing Freeze to be Lifted for Applications Under Part 90 for 12.5 kHz Offset Channels in the 421-430 MHz and 470-512 MHz Bands, *Public Notice*, 13 FCC Rcd 5942 (WTB 1997) (quoting LMCC letter).

¹¹ See 47 C.F.R. § 1.925.

¹² See *Order*, 20 FCC Rcd at 10106-07 ¶ 5.

¹³ *Id.* El Segundo proposed to operate with a 12.5 kHz bandwidth, and the frequencies it requested are separated by 12.5 kHz from the frequencies on which NSTN operates with a 12.5 kHz bandwidth. Consequently, there is no spectral overlap between El Segundo and NSTN. *Id.*

¹⁴ *Id.* at 10107 ¶ 5.

¹⁵ Opposition to Informal Petition for Reconsideration, filed by the City of El Segundo on July 20, 2005 (Opposition). On August 16, El Segundo filed a Supplement to its Opposition. Supplement to Opposition to Informal Petition for Reconsideration, filed by the City of El Segundo on August 16, 2005. El Segundo argues that NSTN’s Petition should be dismissed because it appears that NSTN failed to file it with the Commission’s Secretary. *Id.* at 2. In fact, NSTN’s Petition was correctly addressed to the Secretary and timely filed. Accordingly, we will treat it as a petition for reconsideration pursuant to Section 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106.

consensus requires an interference analysis for non-overlapping stations in the 470-512 MHz band.¹⁶ As NSTN observes, technical rules such as emission masks and frequency tolerance requirements are intended to keep stations from transmitting on spectrum assigned to adjacent channels.¹⁷ Although NSTN's observation is correct, it is irrelevant to whether an interference analysis is required for non-overlapping stations. We note that under the rules adopted in the Refarming proceeding, 25 kHz and 12.5 kHz bandwidth channels have coexisted for some time. Moreover, the LMCC consensus specifically considers "the relationship between a 12.5 kHz system and an existing 25 kHz system, separated by 12.5 kHz," as well as the relationship between co-channel stations, and does not address cases involving 12.5 kHz systems separated by 12.5 kHz.¹⁸ NSTN fails to provide any supporting precedent that counters or calls into question the Division's conclusion that the LMCC consensus does not address potential interference between 12.5 kHz systems separated by 12.5 kHz. El Segundo observes that the Commission has never evaluated the potential effects of adjacent channel Part 90 operations on licensees with no spectrum overlap.¹⁹

6. Finally, NSTN submits an engineering analysis to demonstrate that El Segundo's two new sites will cause 15.08% and 20.56% degradation²⁰ to NSTN's Monte Nido, California site operations, assuming digital modulation.²¹ By submitting the analysis after the grant to El Segundo and not earlier when NSTN had an opportunity with its Informal Petition to Dismiss or Deny, NSTN's instant Petition relies on facts not previously presented to the Commission. Section 1.106(c) of the Commission's Rules sets forth limited circumstances under which a petition for reconsideration may rely on facts not previously presented.²² Even assuming that we were to consider the analysis at this stage in the proceedings, we agree with El Segundo that the analysis is moot in light of our conclusion that neither our rules nor the LMCC consensus requires non-overlapping stations to satisfy such an analysis.²³

IV. CONCLUSION AND ORDERING CLAUSES

7. After careful consideration of the information before us, we again conclude that El Segundo's application was properly coordinated.²⁴ Accordingly, we deny NSTN's Petition.

8. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.41 and 1.106 of the Commission's Rules, 47 C.F.R. §§ 1.41, 1.106, the Informal Petition for Reconsideration of National Science and Technology Network, Inc., filed on July 7, 2005, IS DENIED.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the

¹⁶ See Petition at 1.

¹⁷ *Id.*

¹⁸ LMCC consensus at 1-2; see also Attorney General's Office of the State of New Jersey, *Order*, 20 FCC Rcd 10109, 10115 n.43 (WTB PSCID 2005) ("The LMCC consensus considers the relationship between a new 12.5 kHz bandwidth system and an existing 25 kHz bandwidth system, separated by 12.5 kHz.").

¹⁹ See Opposition at 5.

²⁰ The LMCC consensus prohibits coordination of overlapping or co-channel stations that will cause greater than five percent degradation. See LMCC consensus at 1.

²¹ See Engineering Exhibit for National Science and Technology Network, Inc., ("NSTN") Licensee of WPMP967, 471.35 MHz, attached to Petition.

²² See 47 C.F.R. § 1.106(c).

²³ See Opposition at 6.

²⁴ See FCC File No. 0001818985, APCO Frequency Coordination No. 46PWAP640176619.

Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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